

# HOUSE BILL 399

J1

(2lr2245)

## ENROLLED BILL

— Health and Government Operations/Finance —

Introduced by **Delegates Pena–Melnyk, Bromwell, Cullison, Hubbard, A. Kelly, Kipke, Love, Nathan–Pulliam, and Oaks**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

\_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

\_\_\_\_\_  
Speaker.

CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Health – Cottage Food Businesses – Requirements**

3 FOR the purpose of providing that a cottage food business is not required, under  
4 certain circumstances, to be licensed by the Department of Health and Mental  
5 Hygiene; providing that the owner of a cottage food business may sell only  
6 cottage food products that are stored on certain premises and prepackaged with  
7 a certain label; requiring the owner of a cottage food business to comply with  
8 certain county and municipal laws and ordinances; authorizing the Department  
9 to investigate certain complaints; authorizing a representative of the  
10 Department to enter and inspect, under certain circumstances, the premises of  
11 a cottage food business for a certain purpose; prohibiting the owner of a cottage  
12 food business from refusing to grant certain access to the premises and  
13 interfering with a certain inspection; providing that an investigation of a  
14 cottage food business conducted under a certain provision of this Act may

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### EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

*Italics* indicate opposite chamber/conference committee amendments.



1 include sampling of a cottage food product for certain purposes; requiring the  
 2 Department to adopt regulations to carry out this Act; providing that a person  
 3 who violates this Act is not subject to certain penalties; providing that certain  
 4 provisions of this Act do not exempt a cottage food business from certain tax  
 5 laws; providing for the application of this Act; defining certain terms; altering  
 6 certain definitions; and generally relating to cottage food businesses.

7 BY repealing and reenacting, without amendments,  
 8 Article – Health – General  
 9 Section 21–301(a) and (f)  
 10 Annotated Code of Maryland  
 11 (2009 Replacement Volume and 2011 Supplement)

12 BY adding to  
 13 Article – Health – General  
 14 Section 21–301(b–1) and (b–2) and 21–330.1  
 15 Annotated Code of Maryland  
 16 (2009 Replacement Volume and 2011 Supplement)

17 BY repealing and reenacting, with amendments,  
 18 Article – Health – General  
 19 Section 21–301(g) and (h) and 21–1214  
 20 Annotated Code of Maryland  
 21 (2009 Replacement Volume and 2011 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
 23 MARYLAND, That the Laws of Maryland read as follows:

24 **Article – Health – General**

25 21–301.

26 (a) In this subtitle the following words have the meanings indicated.

27 **(B–1) “COTTAGE FOOD BUSINESS” MEANS A BUSINESS THAT:**

28 **(1) PRODUCES OR PACKAGES COTTAGE FOOD PRODUCTS IN A**  
 29 **RESIDENTIAL KITCHEN; ~~AND~~**

30 **(2) SELLS THE COTTAGE FOOD PRODUCTS IN ACCORDANCE WITH**  
 31 **§ 21–330.1 OF THIS SUBTITLE AND REGULATIONS ADOPTED BY THE**  
 32 **DEPARTMENT; AND**

33 **(3) HAS ANNUAL SALES REVENUES OF FROM THE SALE OF**  
 34 **COTTAGE FOOD PRODUCTS IN AN AMOUNT NOT EXCEEDING \$25,000.**

1           **(B-2) (1)** ~~“COTTAGE FOOD PRODUCT” MEANS A NONHAZARDOUS FOOD,~~  
2 ~~AS SPECIFIED IN REGULATIONS ADOPTED BY THE DEPARTMENT, THAT IS SOLD~~  
3 ~~BY A COTTAGE FOOD BUSINESS AT A FARMER’S MARKET OR PUBLIC EVENT IN~~  
4 ~~ACCORDANCE WITH § 21-330.1 OF THIS SUBTITLE AND REGULATIONS ADOPTED~~  
5 ~~BY THE DEPARTMENT.~~

6           ~~(2) “COTTAGE FOOD PRODUCT” DOES NOT INCLUDE A~~  
7 ~~POTENTIALLY HAZARDOUS FOOD, AS DEFINED IN COMAR 10.15.03.02.~~

8           (f) “Food establishment” means:

9                   (1) A food service facility; or

10                   (2) A food processing plant.

11           (g) (1) “Food processing plant” means any place used for, or in connection  
12 with, the commercial manufacturing, preparing, processing, packaging, canning,  
13 freezing, storing, distributing, labeling, or holding of food or drink for human  
14 consumption.

15                   (2) “Food processing plant” includes:

16                           (i) A bakery plant;

17                           (ii) A cannery;

18                           (iii) A confectionery plant;

19                           (iv) A crab meat picking plant;

20                           (v) A food manufacturing plant;

21                           (vi) A food warehouse or distribution center;

22                           (vii) A frozen food processing plant;

23                           (viii) An ice manufacturing plant;

24                           (ix) A shellfish plant;

25                           (x) A soft drink manufacturing plant; or

26                           (xi) A bottled water plant.

27                   (3) “Food processing plant” does not include [a]:

1                   **(I)**    **A** warehouse or distribution center that:

2                    [(i)]   **1.**    Does not process food; and

3                    [(ii)] **2.**    Stores only sealed containers of whole bean, ground or  
4 instant coffee, leaf or instant teas, nondairy dehydrated whiteners, sugar, or  
5 sugar-free sweeteners; **OR**

6                   **(II)**   **A COTTAGE FOOD BUSINESS.**

7           (h)    (1)    “Food service facility” means:

8                    (i)    A place where food or drink is prepared for sale or service on  
9 the premises or elsewhere; or

10                   (ii)   Any operation where food is served to or provided for the  
11 public, with or without charge.

12                   (2)    “Food service facility” does not include:

13                    (i)    A kitchen in a private home where food is prepared at no  
14 charge for guests in the home, for guests at a social gathering, or for service to  
15 unemployed, homeless, or other disadvantaged populations;

16                    (ii)   A food preparation or serving area where only  
17 nonpotentially hazardous food, as defined by the United States Food and Drug  
18 Administration, is prepared or served only by an excluded organization; [or]

19                    (iii)   A location in a farmer’s market or at a public festival or  
20 event where raw agricultural products, as defined in § 21–304(d)(1)(iii) of this subtitle,  
21 are sold; **OR**

22                   **(IV)**   **A COTTAGE FOOD BUSINESS.**

23   **21–330.1.**

24           **(A)**    **THIS SECTION DOES NOT:**

25                    **(1)**    **APPLY TO A FOOD ESTABLISHMENT THAT IS REQUIRED TO**  
26 **HAVE A LICENSE UNDER § 21–305 OF THIS SUBTITLE; OR**

27                    **(2)**    **EXEMPT A COTTAGE FOOD BUSINESS FROM ANY APPLICABLE**  
28 **STATE OR FEDERAL TAX LAWS.**

1           **(B) A COTTAGE FOOD BUSINESS IS NOT REQUIRED TO BE LICENSED BY**  
2 **THE DEPARTMENT IF THE OWNER OF THE COTTAGE FOOD BUSINESS COMPLIES**  
3 **WITH THIS SECTION.**

4           **(C) THE OWNER OF A COTTAGE FOOD BUSINESS MAY SELL ONLY**  
5 **COTTAGE FOOD PRODUCTS THAT ARE:**

6                   **(1) STORED ON THE PREMISES OF THE COTTAGE FOOD BUSINESS;**  
7 **AND**

8                   **(2) PREPACKAGED WITH A LABEL THAT CONTAINS:**

9                           **(I) THE FOLLOWING INFORMATION:**

10                                   **1. THE NAME AND ADDRESS OF THE COTTAGE FOOD**  
11 **BUSINESS;**

12                                   **2. THE NAME OF THE COTTAGE FOOD PRODUCT;**

13                                   **3. THE INGREDIENTS OF THE COTTAGE FOOD**  
14 **PRODUCT IN DESCENDING ORDER OF THE AMOUNT OF EACH INGREDIENT BY**  
15 **WEIGHT;**

16                                   **4. THE NET WEIGHT OR NET VOLUME OF THE**  
17 **COTTAGE FOOD PRODUCT;**

18                                   **5. ALLERGEN INFORMATION AS SPECIFIED BY**  
19 **FEDERAL LABELING REQUIREMENTS; AND**

20                                   **6. IF ANY NUTRITIONAL CLAIM IS MADE,**  
21 **NUTRITIONAL INFORMATION AS SPECIFIED BY FEDERAL LABELING**  
22 **REQUIREMENTS; AND**

23                                   **(II) THE FOLLOWING STATEMENT PRINTED IN 10 POINT OR**  
24 **LARGER TYPE IN A COLOR THAT PROVIDES A CLEAR CONTRAST TO THE**  
25 **BACKGROUND OF THE LABEL: "MADE BY A COTTAGE FOOD BUSINESS THAT IS**  
26 **NOT SUBJECT TO MARYLAND'S FOOD SAFETY REGULATIONS."**

27           **(D) THE OWNER OF A COTTAGE FOOD BUSINESS SHALL COMPLY WITH**  
28 **ALL APPLICABLE COUNTY AND MUNICIPAL LAWS AND ORDINANCES**  
29 **REGULATING THE PREPARATION, PROCESSING, STORAGE, AND SALE OF**  
30 **COTTAGE FOOD PRODUCTS.**

1           **(E) (1) THE DEPARTMENT MAY INVESTIGATE ANY COMPLAINT**  
2 **ALLEGING THAT A COTTAGE FOOD BUSINESS HAS VIOLATED THIS SECTION.**

3           **(2) ON RECEIPT OF A COMPLAINT, A REPRESENTATIVE OF THE**  
4 **DEPARTMENT, AT A REASONABLE TIME, MAY ENTER AND INSPECT THE**  
5 **PREMISES OF A COTTAGE FOOD BUSINESS TO DETERMINE COMPLIANCE WITH**  
6 **THIS SECTION.**

7           **(3) THE OWNER OF A COTTAGE FOOD BUSINESS MAY NOT:**

8                   **(I) REFUSE TO GRANT ACCESS TO A REPRESENTATIVE WHO**  
9 **REQUESTS TO ENTER AND INSPECT THE PREMISES OF THE COTTAGE FOOD**  
10 **BUSINESS UNDER PARAGRAPH (2) OF THIS SUBSECTION; OR**

11                   **(II) INTERFERE WITH ANY INSPECTION UNDER PARAGRAPH**  
12 **(2) OF THIS SUBSECTION.**

13           **(4) AN INVESTIGATION OF A COTTAGE FOOD BUSINESS**  
14 **CONDUCTED UNDER THIS SUBSECTION MAY INCLUDE SAMPLING OF A COTTAGE**  
15 **FOOD PRODUCT TO DETERMINE IF THE COTTAGE FOOD PRODUCT IS**  
16 **MISBRANDED OR ADULTERATED.**

17           **(F) THE DEPARTMENT SHALL ADOPT REGULATIONS TO CARRY OUT**  
18 **THIS SECTION.**

19 21–1214.

20           **(a) (1) [Any] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**  
21 **SUBSECTION, ANY person who violates any provision of Subtitle 3 of this title or any**  
22 **rule or regulation adopted under Subtitle 3 of this title is guilty of a misdemeanor and**  
23 **on conviction is subject to:**

24                   **[(1)] (I) For a first offense, a fine not exceeding \$1,000 or**  
25 **imprisonment not exceeding 90 days, or both; and**

26                   **[(2)] (II) For a second offense, a fine not exceeding \$2,500 or**  
27 **imprisonment not exceeding 1 year, or both.**

28           **(2) A PERSON WHO VIOLATES § 21–330.1 OF THIS TITLE IS NOT**  
29 **SUBJECT TO PARAGRAPH (1) OF THIS SUBSECTION.**

30           **(b) In addition to any criminal penalties imposed under this section, a person**  
31 **who violates any provision of Subtitle 3 of this title or any rule or regulation adopted**  
32 **under Subtitle 3 of this title or any term, condition, or limitation of any license or**  
33 **registration issued under Subtitle 3 of this title:**

1                   (1)    Is liable for a civil penalty not exceeding \$5,000, to be collected in a  
2 civil action in the District Court for any county; and

3                   (2)    May be enjoined from continuing the violation.

4                   (c)    Each day on which a violation occurs is a separate violation under this  
5 section.

6                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
7 October 1, 2012.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.